

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on February 17, 2005 at
8:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)

Members Excused: Rep. Rosalie (Rosie) Buzzas (D)

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Doug Schmitz, OBPP Representative
Barbara Smith, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: HB 2

**EXECUTIVE ACTION ON THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION**

Barbara Smith addressed the handouts she provided to the Committee. The first handout was a packet regarding the Resource Indemnity Trust (RIT) Fund. The second handout was DNRC's proposal for the Renewable Resource and Reclamation Accounts.

[EXHIBIT\(jnh39a01\)](#)

[EXHIBIT\(jnh39a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.4}

Motion: REP. MCNUTT moved that DP 2415 -- Water Adjudication BE ADOPTED.

Discussion:

REP. MCNUTT proposed language for the DP which would require benchmarks to look at the water adjudication fee assessments.

CHAIRMAN RIPLEY suggested that the over-site be provided by the Environmental Quality Council (EQC).

Ms. Smith clarified that REP. MCNUTT wanted coordinating language with the benchmarks that would be in statute when HB 22 passed and an oversight with the EQC. She also noted that the Department was requesting a biennial appropriation.

SEN. BARKUS asked why they were requesting a biennial appropriation.

Mr. Schmitz explained that they were requesting biennial appropriations because of start up costs. He elaborated that they would not be able to get everything started by July 1, so they would not incur or spend all of the money in the first year.

{Tape: 1; Side: A; Approx. Time Counter: 6.4 - 10.2}

REP. MCNUTT responded to SEN. BARKUS' question.

Jack Stults, Administrator for the Resources Division, also addressed SEN. BARKUS' question. He reiterated REP. MCNUTT'S answer. He explained that there were two components: 1) the benchmarks in HB 22 were set up biennial 2) the start up period meant that they would not be receiving funding for the fees until 2006 but they needed the funds in the first half of the fiscal

year to fully fund the employees they would need to meet the first benchmark.

{Tape: 1; Side: A; Approx. Time Counter: 10.2 - 13.6}

SEN. BARKUS wondered how the Department was going to manage its hiring.

Mr. Stults replied that the way that HB 22 was structured required the Department to start as soon as possible with full staff. He noted that they were currently developing DPs and hope to hire a full staff within the first half of fiscal year 2006 before the fee revenues come in.

REP. MCNUTT added that the way the fee works is that it is billed every other year on the even number years. Therefore, they would go until January, 2006, until the first fee is billed and collected. He explained that the reason they did it that way was the fees were \$10 per single and it was more cost effective to bill them every other year.

SEN. HAWKS asked Ms. Smith the difference between DP 2409 and DP 2415.

Ms. Smith informed the Committee that DP 2409 was the \$2 million that the Governor's Office added to the budget to start the process. She explained that General Fund dollars would be transferred into the Water Adjudication Account. She elaborated that the process might shorten the amount of years that the fee would need to be collected.

{Tape: 1; Side: A; Approx. Time Counter: 13.6 - 19.9}

SEN. BARKUS wanted to know why the Department needed to wait, if money was going into the Program.

Ms. Smith reported that with the appropriation in the first year of the biennium, \$400,000 would go to the database and \$600,000 would go to operations.

REP. MCNUTT wondered if DP 2415 had to be contingent on HB 22.

Ms. Smith replied that it would have to be. She asked if REP. MCNUTT wanted a quarterly report to EQC.

REP. MCNUTT affirmed that a quarterly report would be acceptable.

Vote: Motion carried unanimously by voice vote with REP. BUZZAS voting by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 19.9 - 23.2}

Ann Bauchman, Administrator of Centralized Services for DNRC, reported that they had looked at the ending fund balances for the Renewable Resources and Reclamation Development Accounts and added in the proposed Pay Plan. The Department proposed to delete DP 2326 which would save \$250,000. She explained their reasoning behind the proposed deletion. She also mentioned a funding switch with DP 2306 which they used at the beginning to balance the two accounts. They proposed to delete the DP. The third proposal was to delete DP 2412, funding for the Clark Fork River Task Force. She noted that they had a grant and a contract which had been cancelled, so those cancellations were no longer requested in the fund balance numbers. She also indicated the Emergency Grants appropriations in Renewable Resources which was \$140,000.

{Tape: 1; Side: A; Approx. Time Counter: 23.2 - 30.8}

REP. BUZZAS arrived at 8:25 A.M.

REP. MUSGROVE asked about the Liberty Conservation District (CD) grants' deletion.

John Tubbs, Bureau Chief of the Resource Development Bureau, explained that Liberty County had received a \$50,000 grant in 2001. The Bear Paw Development took over management of the grant however, after three and a half years there have been no subscribers, so the \$50,000 was cancelled.

REP. BUZZAS wondered if the elimination of the Clark Fork Task Force was the same as REP. JACKSON'S bill.

CHAIRMAN RIPLEY affirmed that it was.

Mr. Schmitz commented that the Governor's Office supported two of the St. Mary's positions although none of the items were in the Executive Budget. He suggested that they be designated one-time-only (OTO) so they do not end up in the base.

Ms. Smith indicated that the Farm Bill was restricted and designated as OTO.

CHAIRMAN RIPLEY posed either addressing the DPs individually or accepting the Department's proposed packages.

The Committee discussed what the best course of action was and decided to accept the Department's proposal balance.

{Tape: 1; Side: A; Approx. Time Counter: 30.8 - 44.1}

Motion: REP. MCNUTT moved to ADOPT DNRC'S PROPOSAL TO ADJUST THE BIENNIUM ENDING BALANCE FOR THE RECLAMATION AND DEVELOPMENT AND RENEWABLE RESOURCE ACCOUNTS.

Discussion:

REP. MUSGROVE requested that DP 10 be addressed.

Ms. Smith explained that the Committee was working with a revenue source that was approved by multiple committees. She noted that their options were to discuss the matter with the chair of the other committee or amend HB 2 further down the road. The issue with this DP was based on a change of revenue estimates.

REP. BUZZAS asked Ms. Smith to explain what the Library was and how it would affect the Department's budget.

Ms. Smith stated that the State Library had received funding over time, traditionally out of Renewable Resources to support the Natural Resources Information System (NRIS).

{Tape: 1; Side: A; Approx. Time Counter: 44.1 - 50.2}

SEN. BARKUS was confused with the fact the DP 2306 had originally been a neutral DP but seemed to have changed to a DP worth \$360,000.

Ms. Bauchman responded that the DP was still neutral. She explained that there was a negative \$360,000 in the Renewable Resources Account and a positive \$360,000 in the Reclamation Development Account which would make a net balance of \$0.

SEN. BARKUS followed up by asking if there was more money in one of the accounts.

Ms. Bauchman answered that there was not excess money, that the money was balanced in the budget. She expressed that at one time there had been more funding in the Reclamation and Development Account but through appropriations that excess money had been obligated.

CHAIRMAN RIPLEY inferred that statute would allow funding for the DP out of either account interchangeably.

Vote: Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 4.6}

**DP 2320 -- CD Position, DP 2322 -- Development of Missouri River
Conservation District and DP 2321 -- Irrigation**

Ms. Smith suggested that if the Committee wanted to avoid the same situation in two years, they should consider placing restrictions on the Packages.

REP. MCNUTT suggested that they be designated OTO.

Ms. Smith provided the previous votes on the three DPs: **DP 2320** passed 5-1 with CHAIRMAN RIPLEY voting no, **DP 2321** passed unanimously and **DP 2322** passed 5-2 with SEN. BARKUS and CHAIRMAN RIPLEY voting no.

Motion/Vote: REP. MCNUTT moved to AMEND DP 2320, DP 2321 AND DP 2322 TO BE OTO. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 4.6 - 10.1}

Motion/Vote: SEN. BARKUS moved to CLOSE THE DNRC SECTION. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 10.1 - 11.5}

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Motion: SEN. BARKUS moved to RECONSIDER THE MOTION THAT DP 5011 BE ADOPTED.

Discussion:

Richard Oppen, Director of the Department of Environmental Quality (DEQ), addressed DP 5011. He anticipated the consequences of not receiving the three full-time-equivalents (FTE) and the impacts which it would have on the air quality and the ability for the Department to remain in compliance with the Clean Air Act.

{Tape: 1; Side: B; Approx. Time Counter: 11.5 - 20.2}

SEN. HAWKS wondered if the consequences pertained only to coal bed methane wells.

Mr. Oppen replied that the DP was in response to oil and gas wells in general although they were anticipating a huge increase in coal bed methane wells.

CHAIRMAN RIPLEY asked if the law had changed recently.

Mr. Oppen responded that the Montana Clean Air Act (MCAA) had been in place for a long time. He clarified that what they were concerned with was the violation of the MCAA. He indicated that the Environmental Protection Agency did not currently require the Department to get permits for the oil and gas wells but he felt that it would happen soon. He noted that because of the consequences that were becoming evident in Wyoming, they were expecting laws to change regarding water and air quality.

CHAIRMAN RIPLEY inferred that the DP was in anticipation of what will be occurring.

Steve Welch, Administrator of the Permitting Division, added that the DP would focus on the existing oil and gas wells that had already been drilled. The MCAA requires that any facility that has the potential to emit over 25 tons per year must have a permit as compared to the EPA's requirement that any facility over 50 tons be permitted. He guessed that 400-1,000 facilities were potentially out of compliance with the MCAA. He cited that the Department was obligated to enforce the MCAA, which is why the DP was being requested.

{Tape: 1; Side: B; Approx. Time Counter: 20.2 - 28.8}

SEN. HAWKS commented that based on Mr. Welch's testimony, it seemed to him that if in fact Montana was being responsible with air quality, it would be getting into trouble if not prepared for the increase. He felt that to let it go until it became a problem would be unhelpful.

REP. MCNUTT understood that when the oil and gas wells came on line they were aware of the requirements, and those wells which required permitting were getting them. He was disturbed that 900 facilities would require permits. He pointed to North Dakota and the decisions they had made in the area of oil and gas wells. He reiterated that no one knew what EPA would be doing and felt that he had been led to think that it was an EPA requirement when it was not. He did not think they needed another program which would deter the functioning of the oil and gas plants. He felt that the DP was premature and misleading.

{Tape: 1; Side: B; Approx. Time Counter: 28.8 - 36.2}

REP. MUSGROVE expressed that North Dakota and South Dakota were receiving the benefits of Montana's air quality position. He declared that the MCAA was generating the DP more so than the EPA and he felt that it was necessary to allow it in order to make sure everything was in place.

SEN. HAWKS inquired if there was background data on the activity of the oil and gas well sites.

Mr. Welch responded that currently, they were in the process of permitting the incoming oil and gas wells, which was providing some data. He also addressed the issue of who was behind the creation of the DP. He clarified that it was a western regional state discussion and was not an initiative of the EPA.

{Tape: 1; Side: B; Approx. Time Counter: 36.2 - 42.3}

SEN. HAWKS followed up with regards to Mr. Welch's comment that the Department was currently permitting on a regular basis but that they were not collecting enough data at this point to have an impression on the effect on the air quality.

Mr. Welch stated that the facilities that were coming in with applications would not be permitted unless they had the potential to emit 25 tons per year, which makes them subject to the MCAA. He clarified that they would be receiving specific information from those sites. The DP would allow the facilities to drill their wells and then get permitted so that they have an idea of what their emissions actually would be.

REP. BUZZAS referred to the fact that the Department was currently monitoring 400-1,000 wells.

Mr. Welch responded that the number of sites that were not permitted but would require permits per the MCAA were 400-900 wells.

REP. BUZZAS followed up by asking if it was true that the Department wanted the FTE in anticipation of the work or if they needed the positions for the present workload.

Mr. Welch asserted that the positions were for the workload caused by the existing statute of the Clean Air Act to deal with the sites that are not permitted but should be.

REP. BUZZAS felt that there was a good argument for keeping the DP. She stated that the history of Montana is that preventative measures have not been established and there have been

consequences to both air and water quality. She felt that the MCAA addressed the problems. She urged the Committee to keep the DP.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.3}

SEN. BARKUS concluded that the DP was to go back and permit already existing wells. He stressed that they were already permitting new wells. He felt that trying to permit the old wells that have been in existence without permits for years was unnecessary.

SEN. HAWKS expressed that the issue was the cumulative effects of all the wells. He noted that when adding new wells, there would be a backlash after a while. He felt that they needed to be able to monitor all the effects, old and new, from oil and gas wells.

CHAIRMAN RIPLEY felt that the DP was anticipatory, permitting existing wells. He was unsure if it was reasonable to add more bureaucracy to prevent development.

SEN. BARKUS claimed that the current process of permitting takes the cumulative buildup of pollution into consideration. He felt that what is already present is taken into the process of permitting.

{Tape: 2; Side: A; Approx. Time Counter: 1.3 - 5.8}

REP. MUSGROVE asked if the facilities, who were known polluters, did anything about cleaning up their facilities without a permit.

Mr. Welch expressed that many of the controls that would be required through the permitting process are already in place at some of these facilities. The reason for the DP is so the Department can track the cumulative effects.

REP. MCNUTT commented that he had discussed the topic with Tom Richmond of the Oil and Gas Board. He claimed that the industry was aware of the wells which required air quality permits and they were purchasing them. He felt that the new permitting process would inflict penalties on individuals who had not shown any problems with air quality. He insisted that there was already a process in place and it was not necessary to implement a new one.

{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 10.1}

REP. MUSGROVE asked how many out of the 900 wells were new facilities and how many were existing facilities.

Mr. Welch replied that they were anticipating 900 existing wells that would need to be permitted and 50-60 new facilities that would need to be permitted each year.

SEN. BARKUS professed that the Department already had the resources and personnel to deal with the 50-60 new facilities.

Mr. Welch notified that the three requested FTE were needed to deal with the 900 existing wells as well as the 50-60 anticipated wells.

SEN. BARKUS inquired how the Department was handling new wells currently.

Mr. Welch related that they were dealing with them through the existing staff.

CHAIRMAN RIPLEY interjected that the Department had originally requested seven FTE but now felt that three could handle the issue this biennium. He assumed that they would address more FTE the next biennium.

Mr. Welch explained that the Air Quality Program had requested seven FTE but through anticipation, they reduced it to three FTE with the thought of using contracted services money to help with the influx.

{Tape: 2; Side: A; Approx. Time Counter: 10.1 - 13.6}

SEN. HAWKS stated that each new well had a level of emission, adding to the total amount. He added that there were unpermitted wells which were undoubtedly at higher levels of emission. Ultimately, those added together might put Montana over the air quality limits. He speculated that when Montana reaches that level, it will have to deal with a crisis. He preferred to deal with the issues now, rather than wait until it is a problem.

Ms. Smith clarified that the package was funded entirely on air quality operating fees collected off the permits, not what REP. MCNUTT indicated, that the air quality fees may pay for part of the FTEs. She also followed up on the contracted services section of the DPs. She informed the Committee that the package contained \$137,500 in fiscal year 2006 and \$120,000 in fiscal year 2007, for contracted services.

{Tape: 2; Side: A; Approx. Time Counter: 13.6 - 16.8}

Vote: Motion failed 3-4 by voice vote with REP. BUZZAS, SEN. HANSEN, SEN. HAWKS, and REP. MUSGROVE voting no.

Gary Hamel, Budget Manager for the DEQ, provided a proposal for the balancing of the Resource Indemnity Account in a packet form and in a concise summary form.

[EXHIBIT\(jnh39a03\)](#)

[EXHIBIT\(jnh39a04\)](#)

Mr. Oppen noted that there were three alternative suggestions which the Department had developed to balance the RIT fund. He covered the first option, 'Option A,' first.

{Tape: 2; Side: A; Approx. Time Counter: 16.8 - 31.9}

REP. MUSGROVE indicated that REP. WINDY BOY also had a bill which dealt with the Orphan Share Account. He wanted to know how the bill would impact the Department's proposal.

Mr. Oppen informed the Committee that REP. WINDY BOY'S bill would divert future revenue from the Account but would not affect the existing balance.

REP. MUSGROVE noted that if the Committee removed the money from the existing balance, it would make future interest weaker.

CHAIRMAN RIPLEY inquired about the status of SB 143.

Ms. Smith responded that SB 143 had passed out of Committee, failed on the Senate floor, returned to Committee and was passed 11-0 from the Transportation and Energy Committee. She also referenced SB 149 which would do the same thing and was heard the night before in Natural Resources Committee although the vote was not recorded.

Mr. Oppen discussed SB 143 and its effect on the Department. He clarified that SB 143 dealt only with the Orphan Share Account currently.

REP. BUZZAS asked what the current balance of the Orphan Share Account was.

Mr. Hamel replied that the ending fund balance was approximately \$6 million.

{Tape: 2; Side: A; Approx. Time Counter: 31.9 - 39.8}

Mr. Schmitz added that REP. WINDY BOY'S bill HB 379 passed on the House floor 83-17 but was amended to include the first year payment of \$1.43 million coming out of the Orphan Share -- off the top. He noted that the bill had been reassigned to House Appropriations Committee.

REP. MUSGROVE wondered when SB 379 would take affect and how the action would unfold.

Ms. Smith stated that oil and gas taxes are divided up. She explained that REP. WINDY BOY'S would come out before a deposit was made to the Orphan Share and would start the coming biennium.

Mr. Oppen indicated that they had anticipated a negative fund balance in the Environmental Quality Protection Fund (EQPF) which is why they had proposed SB 143.

Ms. Smith commented that in the budget analysis she had written about this particular problem. She felt that while the transfer would take care of the issue, it did not address the issue of why the accounts were established in the first place. She believed that they needed to balance the account but until they looked at how the money was divided out and expended, the problem would not be fixed.

{Tape: 2; Side: A; Approx. Time Counter: 39.8 - 45.6}

Mr. Oppen agreed with Ms. Smith. He indicated that the DEQ had discussed the issue with DNRC and was planning on coming up with a fix for the problem to be presented the next biennium.

{Tape: 2; Side: A; Approx. Time Counter: 45.6 - 47.9}

REP. BUZZAS left the room at 9:30 A.M., giving REP. MUSGROVE her proxy.

Mr. Oppen continued to discuss the alternative plans the Department had created to deal with the RIT funds. The second proposal, 'Option B,' was the next one discussed followed by 'Option C.'

{Tape: 2; Side: B; Approx. Time Counter: 0 - 17}

SEN. HAWKS suggested the meaning behind Option A and their hopes with Option B.

SEN. BARKUS departed at 9:50 A.M., leaving his proxy with CHAIRMAN RIPLEY.

{Tape: 2; Side: B; Approx. Time Counter: 17 - 18.3}

CHAIRMAN RIPLEY asserted that SB 143 was an unknown variable.

SEN. HAWKS suggested that the motion include Option A rotating into Option B in the case SB 143 failed.

CHAIRMAN RIPLEY asked how that would work as far as tracking the money.

Ms. Smith related that it would not be too difficult to make Option A contingent on HB 143 with contingency language directing the adoption of Option B if HB 143 failed.

CHAIRMAN RIPLEY had concluded that another option would be to take the requisite money out of the base.

Mr. Opper responded that the base was just about the only source of funding the Department had, since they had not come to the Committee with any new programs. He purported that the Department had tried to stay within the Governor's Budget and so did not have any excess.

Ms. Smith asked how quickly the Department would go through the \$1.8 million of the Rhodia Settlement.

Mr. Opper remarked that he was unsure of how long it would take but was sure that they would go through it faster than they wanted to.

Ms. Smith clarified that the reason she asked was that the Rhodia Funding was a criminal payment to the State for hazardous waste violations. She indicated that they had already moved funding out of Rhodia.

Tom Livers, Deputy Director of DEQ, commented that their original intent for the use of the Rhodia funds was to aid the Hazardous Waste program through 2009. He speculated that if Option A passed they would be able to fund the Program through 2008 and if Option B passed they would only be able to fund the Program through the biennium.

{Tape: 2; Side: B; Approx. Time Counter: 18.3 - 28.2}

CHAIRMAN RIPLEY suggested postponing the decision until the Committee had had a chance to look over the proposals.

SEN. HAWKS wondered if it was appropriate to include language requiring the Department to follow up on a long-term solution to the RIT problem.

Ms. Smith expressed that there were a number of different options: they could put HB 2 language into DEQ asking them to find a long-term solution or, at her suggestion, they could consider a committee bill to study the issue during the Interim. She noted that there would have to be 3/4 vote to have a committee bill.

{Tape: 2; Side: B; Approx. Time Counter: 28.2 - 32.6}

SEN. BARKUS returned at 10:00 A.M.

There was a memo from the Department of Commerce concerning the executive Action taken on February 16. The memo was not discussed during the meeting.

EXHIBIT (jnh39a05)

ADJOURNMENT

Adjournment: 10:15 A.M.

REP. RICK RIPLEY, Chairman

BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT ([jnh39aad0.PDF](#))